

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re EX PARTE Application of Robert Preslier
for an Order, Pursuant to 28 U.S.C. § 1782 to
Obtain Discovery from the Calder Foundation for
Use in a Foreign Proceeding,

Applicant.

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) Case No. 1:20-cv-00684
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DECLARATION OF R. ZACHARY GELBER

Pursuant to 28 U.S.C. § 1746, R. Zachary Gelber deposes and says:

1. I am a member of Gelber & Santillo PLLC, counsel to Robert Preslier. I am familiar with the facts set forth in this declaration from personal knowledge and/or documents I have reviewed.
2. I submit this declaration in support of Preslier's *ex parte* application, pursuant to 28 U.S.C. § 1782 for discovery from the Calder Foundation, a New York based non-profit foundation, for use in French litigation that I understand Preslier intends to commence imminently against Artcurial.
3. The Calder Foundation is a 501(c)(3) organization, formed by the Calder family to collect, exhibit, preserve, and interpret the art of Alexander Calder. According to its website, as well the return address on a letter written by its General Counsel, Jane Pakenham, the Calder Foundation is based in New York City, and has its offices at 207 W. 25th Street, New York, NY 10001. Attached as **Exhibit 1** is a true and correct copy

of a printout from the Calder Foundation's website; *see also* Exhibit B to the Declaration of Pierre-Randolph Dufau, a letter from Calder Foundation General Counsel, Jane Pakenham.

4. Artcurial is a French auction house that sells high-end works of art.
5. It is my understanding based on discussions with Preslier's French counsel and documents they have provided that: a) in connection with a sale of one of Calder's sculptures, Pour Vilar, in May 2010, Artcurial represented to Preslier that it was created in the 1952-1955 time period when it was in fact created in the 1965-1967 time period; and b) Preslier purchased Pour Vilar from Artcurial for € 2,287,810.20, inclusive of tax, based on this misrepresentation.
6. On December 11, 2019, I wrote a letter to the Calder Foundation, requesting that the Foundation voluntarily provide to Preslier documents in its possession regarding the creation date of Pour Vilar and its communications with Artcurial about this issue. Attached as **Exhibit 2** is a true and correct copy of that letter.
7. I subsequently spoke with Jane Pakenham, General Counsel at the Calder Foundation, on December 19 and 20, 2019, and she informed me that the Foundation has documents relating to the creation date of Pour Vilar, and communications with Artcurial about this issue, which it is willing to share, but that it will not release copies of these documents to me without a subpoena.
8. In order to affirmatively establish whether Artcurial made misrepresentations to Preslier in connection with the 2010 auction, and whether these misrepresentations were intentional, we seek from the Calder Foundation any documents that it has regarding the date of Pour Vilar (including relevant communications).

9. Attached hereto as **Exhibit 3** is a form of a proposed subpoena seeking documents from the Calder Foundation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on this 24th day of January, 2020.

/s/ R. Zachary Gelber

R. Zachary Gelber